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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,166	08/05/2003	Julian Crawford	035470.00001	6335

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,166

Applicant(s)

CRAWFORD, JULIAN

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20030805
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1-7 and 16-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 1, 2005.
2. Applicant's election with traverse of Group I, claims 8-15 in the reply filed on April 1, 2005 is acknowledged. The traversal is on the ground(s) that the proposed different process in the restriction requirement does not produce the claimed product. This is not found persuasive because the claimed product does not require bonding between the yarns. Furthermore, a product is defined in its final form not in an intermediate form. In this case, whether the yarns are retained in relative position or not during wrapping is not germane to the product claims because the final product would have the yarns formed in a certain position regardless of whether that positioning was done during wrapping or after the wrapping step is completed.

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The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "said drawn longitudinal filaments" in lines 5, 6, and 7. There is insufficient antecedent basis for this limitation in the claim. It is suggested to change the limitation to -drawn thermoplastic filaments- in order to provide sufficient antecedent basis. Also regarding claim 8, the limitation "in fixed position relative adjacent of said drawn longitudinal filaments" renders the claim vague and indefinite. It is not understood what position "relative adjacent" is. It is also not understood how the drawn longitudinal filaments can be relative adjacent themselves.

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Regarding claim 9, the limitation "said drawn filaments are of a first size and said thermoplastic filaments are of a second size" renders the claim vague and indefinite. Claim 8 in which claim 9 is dependent only has two types of filaments "drawn thermoplastic filaments" and "elastic thermoplastic filaments". It is not understood if the thermoplastic filaments referred to in claim 9 are referring to the drawn thermoplastic filaments or the elastic thermoplastic filaments. Clarification is needed.

Regarding claim 10, the limitation "adjacent of said drawn filaments are substantially in contact along their length" renders the claim vague and indefinite. It is not understood what is adjacent of said drawn filaments or what is substantially in contact along their length. Does this limitation mean that the filaments are in contact along their length, or does it mean that the filaments are parallel? Clarification is needed.

Claim 11 recites the limitation "said drawn longitudinal filaments" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to change the limitation to -drawn thermoplastic filaments- in order to provide sufficient antecedent basis.

Claims 12-15 are rejected as being dependent on claim 8.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Plymale (USPN 3,477,892).

Plymale anticipate an expandable tubular fabric (Figure 3) comprising a plurality of drawn thermoplastic filaments arranged along an ellipsoid path in juxtaposed positions forming an elongated tube (formed from the extruder 10', Figure 3). The tubular fabric further comprises at least one thermoplastic filament helically wrapped (formed from the extruder 12', Figure 3) about said drawn filaments forming helical wraps. The filaments are thermoplastic, such as polyamides and polyolefins, and/or elastic, such as rubber (col.3, 1.66-72). All of the filaments are formed of soft and tacky plastic strands therefore bonding at the crossings between the drawn longitudinal filaments and the helically wrapped filaments (col.1, 1.58 - col.2, 1.3). The longitudinal filaments are in fixed position relative to the adjacent longitudinal filaments when forming the

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net and after formation because they are bonded to the crossing helically wrapped filaments. Regarding claim 10, "adjacent of said drawn filaments are substantially in contact along their length" for examination purposes is determined to define parallel filaments. In this case the longitudinal filaments are parallel (Figure 3). Regarding claim 11, the helical wraps formed by said filament are longitudinally spaced along the length of said drawn longitudinal filaments (Figure 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 9 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plymale (USPN 3,477,892).

Plymale teach all that is claimed in claim 8 as shown above, and teaches that the mesh fabric is produced depending on the intended end use of the fabric with varying sized filaments formed by varied sized openings in the planar and/or circular dies employed (col.4, 1.5-13). Plymale also teaches that the filaments are formed having any cross-sectional shape (col.4, 1.22-23) depending on the intended end result of the fabric. One of ordinary skill in the art would have recognized that through routine experimentation the thermoplastic filaments would be at least twice the size of said drawn filaments and the cross-sectional shape of the filaments would be profiled or circular depending on the intended end result of the fabric, as taught by Plymale.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to set the size of the openings of the planar die and circular die to form thermoplastic filaments having at least twice the size of the drawn filaments and create the filaments

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having either a circular or profiled cross section depending on the intended end result of the fabric, as taught by Plymale, absent the showing of unexpected result.

Conclusion

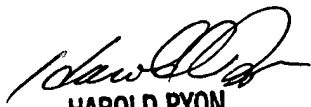
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772
CPB
June 23, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

6/24/05